

Application No. 09/913,781
Amendment Under Rule 116 dated February 27, 2004
Reply to Office Action of February 17, 2004

REMARKS/ARGUMENT

The specification has been amended at page 17 to correct an obvious typographical error. Since no new matter has been introduced, entry of this amendment is respectfully requested.

Claim 5 has been amended to be in harmony with the correct antecedent "filtrate" in claim 10. Claim 10 has been amended so as to better distinguish that claim and those dependent therefrom from the prior art of record. It is respectfully submitted that no new issues are raised that would require a further search. In addition, in the event an appeal is taken, claim 10 as amended is submitted to be in better form for consideration on appeal. Accordingly, entry of the amendments to claims 5 and 10 is respectfully requested.

Turning to the substance of the final rejection, all of the claims in the case, comprising claims 5, 7-8 and 10, stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,647, 990 (Vassarotti) and U.S. Patent No. 4,948,564 (Root). The three obviousness rejections based upon Vassarotti and Root are respectfully traversed and will be addressed in the order presented in the final rejection.

Rejection 1 Claims 10 and 5 stand rejected under Section 103(a) as being unpatentable over Vassarotti, the Examiner reasoning that Vassarotti discloses a two-sided filtration insert in FIG. 2 that has all of the structural details

called out in applicant's claim 10(a) and a two-part pressure resistant sleeve in FIGS. 7-8 that has all of the characteristics called out in applicant's claim 10(b).

The Examiner further reasons that Vassarotti's gasket 24, although not described as "elastic" is nevertheless equivalent. The Examiner does concede that Vassarotti's sleeve 25 shown in FIGS. 7-8 is not two-part as claimed by applicant, but maintains that it is equivalent to a two-part sleeve, pointing to column 5, lines 1-31. In addition, the Examiner reasons that making the sleeve integral or separable would be a matter of obvious engineering choice, citing authorities.

Claim 10 as amended is respectfully submitted to be readily distinguishable from the Vassarotti device. Specifically, the term "aperture" has been amended to "port" in all instances, and the ports are defined to be separate from and in fluid communication with the concentration and filtrate chambers. In contrast, Vassarotti in FIG. 2 does not disclose any port (or aperture for that matter) that is separate from and in fluid communication with the concentration or filtration chamber 3. Nor does Vassarotti FIG. 2 show any second port that is separate from and in fluid communication with filtrate outlet channels 9 (which the Examiner is presumably construing to be multiple filtrate chambers). Because claim 10 as amended is readily distinguishable from Vassarotti in the foregoing respects, without more, the obviousness rejection of claim 10 based upon Vassarotti is submitted to be overcome.

However, claim 10 as amended is further distinguishable from Vassarotti, even assuming the Examiner's argument concerning the equivalence of a two-part sleeve and a single sleeve, for the following reasons. Vassarotti's sleeve 25 does not have closed end portions and it does not surround first and second ports, as now claimed by applicant in claim 10(b). For the foregoing reasons, applicant respectfully requests that the obviousness rejection of claim 10 based upon Vassarotti be withdrawn. Because claim 5 is dependent from claim 10, and so contains the same limitations, it is similarly readily distinguishable from Vassarotti.

Rejection 2 Claims 7-8 stand rejected under Section 103(a) as being unpatentable over Vassarotti in view of Root, the Examiner reasoning that Vassarotti teaches all the elements of claim 10, that Root teaches a plurality of concentrate and filtrate chambers separated by membranes forming a micro titer plate, and that accordingly, the subject matter of claims 7-8, which add the limitation of a plurality of concentrate and filtrate chambers (claim 7) and an adaptation to matingly engage the receptacles of a micro titer (claim 8) would have been obvious to one of ordinary skill in the art given the teachings of Root.

In response, applicant points out that claim 10 as amended is distinguishable from the primary reference Vassarotti. And Root does not, for the reasons stated below in connection with the third obviousness rejection, supply the deficiencies of Vassarotti relative to claim 10. Since claims 7-8 are both dependent

from claim 10 and so contain the same limitations, they are likewise distinguishable from the combination of Vassarotti and Root.

Rejection 3 Claims 5, 7-8 and 10 stand rejected under Section 103(a) as being unpatentable over Root, the Examiner reasoning that Root discloses in FIG. 14 all of the elements in those claims and further reasoning that, although no gasket is disclosed in Root, the membranes disclosed in FIG. 14 are equivalent to an integral gasket. This rejection too is respectfully traversed.

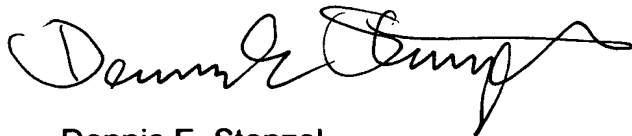
For purposes of this argument, it will be assumed that the Examiner intended to refer to cover 202 as part of a two-part sleeve instead of the bolt 220. Contrary to the Examiner's contention, element 18 in FIG. 14 is not an upper plate, but is rather a filter strip made up of eight open wells 20 having membranes 34 situated at the bottom thereof. See column 8, lines 1-18. Nor does root disclose a membrane support plate having at least one filtrate chamber for supporting the permeate side of at least one membrane, as called for in applicant's claim 10 (a)(ii). More specifically, Root's filtrate chambers are situated below and apart from transfer plate 201 in well strip 76 so that they cannot support the permeate side of membranes 34. See Column 8 at lines 34-36 ("through nozzles 218 for directing the filtrate into an aligned well 78 below the transfer plate. The lower surface 219 of transfer plate 201 rests upon the upper surface of the well strip 76.").

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Finally, it is apparent that even if base 200 and cover 202 are construed to be a two-part sleeve, base 200 and cover 202 do not exert any compressive force to seal any membrane fluid-tight against either the concentration chamber or the filtrate chamber; the reason is that the only compressive forces exerted by the Root device are by way of the nut-and-bolt combination 203 and 220 in conjunction with springs 204. Moreover, base 200 and cover 202 do not surround any ports that are in fluid communication with the concentration and filtrate chambers, as called out in applicant's amended claim 10(b). Finally, Root's base 200 and cover 202 do not have closed end portions, also as called out in applicant's amended claim 10(b).

For the reasons stated, early and favorable reconsideration is respectfully solicited.

Respectfully submitted,

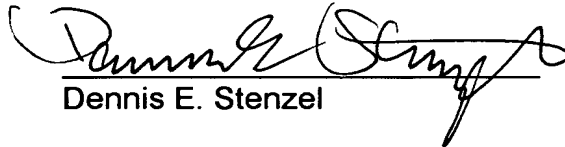
A handwritten signature in black ink, appearing to read "Dennis E. Stenzel", with a stylized flourish at the end.

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I hereby certify that this AMENDMENT UNDER 37 CFR 1.116 --
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Postcard, is being deposited with the United States Postal Service as first class
mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O.
Box 1450, Alexandria, Virginia 22313-1450 on this 27th day of February, 2004.


Dennis E. Stenzel